

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3)

<u>Section Numbers:</u>	<u>Proposed Action:</u>
100.7040	Amendment
100.7300	Amendment
100.7310	Amendment
100.7320	Amendment
100.7325	New Section
100.7330	Amendment
100.7350	New Section
100.7360	New Section
100.7370	New Section
- 4) Statutory Authority: 35 ILCS 5/704, 5/704A and 5/1401
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking provides guidance on the application of the Illinois income tax withholding requirements for employers, as amended in Public Act 95-0008.
- 6) Published studies or reports and sources of underlying data used to compose this rulemaking:
None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes

<u>Section Number</u>	<u>Proposed Action</u>	<u>IL Register Citation</u>
100.2406	New Section	31 Ill. Reg. 15240; November 16, 2007
100.3500	Amendment	32 Ill. Reg. 5936; April 11, 2008
100.9730	New Section	32 Ill. Reg. 5936; April 11, 2008
100.2655	New Section	32 Ill. Reg. 6923, April 25, 2008
100.2196	Amendment	32 Ill. Reg. 7036, May 2, 2008
100.2199	Amendment	32 Ill. Reg. 7257, May 9, 2008
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this rulemaking:
Persons who wish to submit comments on this rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Paul Caselton
Deputy General Counsel - Income Tax
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

(217) 524-3951

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Small businesses, small municipalities and not-for-profit corporations with employees will receive guidance on the application of the new income tax withholding statutes.

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: January 2008

The full text of the Proposed Amendments begins on the next page:

SUBPART Q: REQUIREMENT AND AMOUNT OF WITHHOLDING

Section 100.7040 Employer Registration (IITA Section 701)

Every employer required to deduct and withhold Illinois income tax must register with the Department of Revenue ~~by filing Form NUC-1 Illinois Business Taxpayer Application for Registration~~. Each registration application of an employer that has been assigned a federal identification number must contain the employer's federal identification number. If an employer has not been issued a federal employer's identification number, the employer must notify the Department within a reasonable time after its federal employer's identification number has been issued.

(Source: Amended at 32 Ill. Reg _____, effective _____)

SUBPART T: EMPLOYER'S RETURN AND PAYMENT OF TAX WITHHELD

Section 100.7300 Returns and Payments of Income Tax Withheld From Wages (IITA ~~Sections~~Section 704 and 704A)

- a) Quarterly returns. Except as otherwise provided in ~~Sections~~Section 100.7310 or 100.7350~~below~~, every employer required to deduct and withhold tax on compensation paid in Illinois shall make a return for the first calendar quarter in which such tax is deducted and withheld and for each subsequent calendar quarter (whether or not compensation is paid therein) until a final return is filed. IITA Sections 704(c) and 704A(b). ~~Form IL-941, Employer's Quarterly Illinois Withholding Tax Return, is prescribed for making the return required under this paragraph. Monthly and quarter-monthly tax payments may also be required. See subsections (c) and (d) below. In~~

~~some circumstances, only a single IL-941 and payment of withheld taxes will be required. See Section 100.7310 below.~~

b) Retention of copies of combined W-2.

1) For calendar years prior to 2008.

A) Every employer required under ~~subsection (a) above this section or Sections 100.7310 or 100.7350~~ to make a return of tax withheld from compensation for a period ending December 31, or for any period for which a return is made as a final return, shall retain a copy of each wage and tax statement on the combined W-2 required under Section 100.7200 above to be furnished by the employer with respect to compensation paid during the calendar year. For calendar years prior to 2008, every Every employer shall maintain copies of the combined W-2 forms for three years from the due date of the IL-W-3 for that period. For each calendar year after 2007, every employer shall maintain copies of the combined W-2 forms until January 31 of the fourth year following that calendar year. If the Department makes a written request for copies of the combined W-2 forms, the copies shall be forwarded to the Department within 30 days after the written request.

B2) If an employer issues a corrected copy of a combined W-2 to an employee for a prior calendar year (see Section 100.7200(d) above), a copy shall be retained for a period of four years from the date fixed for filing the employer's return of tax withheld (~~Form IL-941~~) for the period ending December 31 of the year in which the correction is made, or for any period in such year for which the return is made as a final return. A statement explaining the corrections shall also be retained and, if the Department requests, a copy of the corrected W-2 shall be submitted within 30 days after the written request.

C3) Each year, the Department will contact a sample of Illinois employers and require those employers to provide copies of their employee W-2s. Employers chosen by the Department will be required to file W-2s in the same manner they are required to file W-2s federally.

iA) Employers with more than 250 employees in the State of Illinois will be required to provide the W-2s on magnetic tape, diskette, or cartridge meeting the specifications required by the Social Security Administration (see 26 CFR 301.6011-2-~~(1994)~~).

iiB) All other employers may provide the W-2s on magnetic media or paper.

D4) An extension of time for providing statements requested by the Department shall be granted upon a showing of good cause.

2) For calendar years after 2007, persons who are required to withhold Illinois income tax from 1,000 or more employees during the year and who are required to file copies of the W-2s on magnetic media under 26 CFR 301.6011-2 shall file copies of the W-2s with the Department using the same magnetic media used for

their federal filing no later than March 31 of the year following the year of the withholding, unless a later due date is prescribed under federal law for filing the copies of the W-2, in which case filing of copies with the Department shall be due on the same date. IITA Sections 704(f) and 704A(f).

3) For calendar years after 2007, with respect to copies of W-2s other than those required to be filed on magnetic media under paragraph (2) of this subsection:

A) Every employer required under this section or Sections 100.7310 or 100.7350 to make a return of tax withheld from compensation for a period ending December 31, or for any period for which a return is made as a final return, shall retain a copy of each wage and tax statement on the combined W-2 required under Section 100.7200 above to be furnished by the employer with respect to compensation paid during the calendar year. Every employer shall maintain copies of the combined W-2 forms until January 31 of the fourth year following that calendar year. If the Department makes a written request for copies of the combined W-2 forms, the copies shall be forwarded to the Department within 30 days after the written request.

B) If an employer issues a corrected copy of a combined W-2 to an employee for a prior calendar year (see Section 100.7200(d) above), a copy shall be retained for a period of four years from the date fixed for filing the employer's return of tax withheld for the period ending December 31 of the year in which the correction is made, or for any period in such year for which the return is made as a final return. A statement explaining the corrections shall also be retained and, if the Department requests, a copy of the corrected W-2 shall be submitted within 30 days after the written request.

C) Each year, the Department will contact a sample of Illinois employers and require those employers to provide copies of their employee W-2s.

D) An extension of time for providing statements requested by the Department shall be granted upon a showing of good cause.

c) Payments of amounts withheld prior to January 1, 2008. Except as otherwise provided in Section 100.7310 or Section 100.7350, with respect to amounts withheld or required to be withheld prior to January 1, 2008:

1) Quarter-monthly tax payments. Every employer required to file a quarterly return under subsection (a) above shall also file a quarter-monthly tax payment form if the amount of tax deducted and withheld during any quarter-monthly period plus the amount previously withheld and not remitted to the Department exceeds \$1,000.00. An employer need not file a quarter-monthly form if no quarter-monthly payment is due. ~~Form IL-501 is prescribed for use with the payments required under this paragraph. Quarter-monthly periods end on the 7th, 15th, 22nd and last day of each month.~~ Certain taxpayers with tax liabilities exceeding statutory thresholds are required to pay their tax liabilities by electronic funds transfer. ~~Part 750.86-III. Adm. Code 750~~ sets forth the rules of the Department concerning payment of taxes by electronic funds transfer, as well as the statutory payment thresholds.

~~2)d)~~ Monthly tax payments. Every employer required to file a quarterly return under subsection (a) above shall also file a monthly tax payment form if the amount of tax deducted and withheld during any calendar month plus the amount previously withheld and not remitted to this Department exceeds \$500.00 including amounts previously withheld and not remitted to the Department, but does not exceed \$1,000.00. An employer need not file a monthly form if no monthly payment is due. No monthly form is required for the third month in any calendar quarter. The information otherwise required to be reported on the monthly form for the third month in a calendar quarter shall be reported on the quarterly return filed for that quarter and no monthly form need be filed for such month. ~~Form IL-501 is prescribed for use with the payments required under this subsection.~~

d) Payments of amounts withheld on or after January 1, 2008. Except as provided in Sections 100.7310 or 100.7350, with respect to amounts withheld or required to be withheld on or after January 1, 2008:

1) Semi-weekly tax payments.

A) An employer who withheld or was required to withhold more than \$12,000 during the look-back period for a calendar year must make semi-weekly payments for the entire calendar year.

B) An employer who withholds or is required to withhold more than \$12,000 in any quarter of a calendar year is required to make semi-weekly payments of amounts withheld or required to be withheld during each remaining quarter of that calendar year and for the subsequent calendar year. IITA Section 704A(c)(1).

2) Monthly tax payments. An employer who is not required to make semi-weekly payments shall make monthly payments of taxes withheld or required to be withheld. IITA Section 704A(c)(3).

(Source: Amended at 32 Ill. Reg _____, effective _____)

Section 100.7310 ~~Quarterly~~ Returns Filed and Payments Made on Annual Basis (IITA Section 704)

a) With respect to taxes withheld or required to be withheld prior to January 1, 2008:

1) In general. Effective January 1, 2005, if an employer had no obligation to deduct and withhold Illinois income tax in the previous calendar year or if the amount of tax deducted and withheld during the previous calendar year was less than \$500 and, in either case, the amount that will be deducted and withheld in the current calendar year will be less than \$500, the employer may file an annual return for the current calendar year or for any period for which a return is made as a final return. No application need be made to file an annual return. The return filed for such period shall report the amount of tax deducted and withheld during the period and not previously remitted. Form IL-941 is prescribed for making the return authorized under this subsection. An employer shall use Form W-3 to submit the information contained on the combined Form W-2, in the same manner as required under Section 100.7300.

~~2)b)~~ Duration of annual filing status. Authority to file a return pursuant to this Section shall remain in effect until that time during any calendar year when the amount of tax deducted and withheld equals or exceeds \$500. When during any such calendar year the amount deducted and withheld equals or exceeds \$500, an employer must file a quarterly return, as required under Section 100.7300(a), for the quarter in which such event occurs and for all subsequent quarters until the requirements of subsection (a) are again met by the employer.

b) With respect to any calendar year beginning on or after January 1, 2008:

1) An employer who has timely filed all returns due under IITA Sections 704 or 704A during the look-back period for a calendar year, reporting on those returns a total liability of \$1,000 or less, and who timely paid the amounts reported, may file a single annual return for that calendar year and pay the tax required to be withheld during that calendar year when that return is due. An employer who was not required to file returns during the look-back period is not eligible under this paragraph (1) to make annual filings or payments. IITA Section 704A(d)(1).

2) Any employer that is eligible to make an annual filing and payment for a calendar year under paragraph (1) of this subsection and who withholds or is required to withhold more than \$12,000 in any quarter of that year must:

A) make a quarterly return for that quarter, reporting and paying all amounts withheld or required to be withheld during the year through the end of that quarter with that return;

B) make a quarterly return for each subsequent quarter of that calendar year and for each quarter of the following calendar year; and

C) make semi-weekly payments of taxes withheld or required to be withheld during the remaining quarters of that calendar year and during the following calendar year. IITA Section 704A(c)(2).

~~e) Cross reference. See IITA Sections 1002(c) and 1002(d), the UPIA and 86 Ill. Adm. Code 700 for penalties for failure to file a return and remit the tax required by this Act.~~

(Source: Amended at 32 Ill. Reg _____, effective _____)

Section 100.7320 Time For Filing Returns and Making Payments for Taxes Required to Be Withheld Prior to January 1, 2008 (IITA Section 704)

a) Quarterly return. Each return required under Section 100.7300(a) by paragraph (a) of 86 Ill. Adm. Code 100.7300 shall be filed on or before the last day of the first calendar month following the calendar quarter for which such return is made.

b) Quarter-monthly tax payments. Quarter-monthly periods end on the 7th, 15th, 22nd, and last day of each month. Quarter-monthly forms required under Section 100.7300(c)(1) by paragraph (c) of 86 Ill. Adm. Code 100.7300 shall be filed on or before the third banking day following the close of the quarter-monthly period. ~~Banking days do not include Saturdays, Sundays, legal holidays, or local bank holidays.~~ Whenever a quarter-monthly payment is due which includes amounts withheld in a prior calendar quarter,

separate quarter-monthly forms must be submitted. See the note in the example in subsection (d) below.

- c) Monthly tax payments. Monthly returns and payments forms—required by Section 100.7300(c)(2) paragraphs (c) and (d) of 86 Ill. Adm. Code 100.7300 shall be made filed on or before the 15th day of the second and third months of each calendar quarter for amounts withheld during the first and second months of the quarter, respectively, and on or before the due date prescribed in subsection (a) for filing the return for the quarter for amounts withheld during the third month of the quarter. IITA Section 704(c).
- d) Example. The provisions of this Section with respect to taxes required to be withheld prior to January 1, 2008, can be partially illustrated as follows:

<u>Withholding Period</u>	<u>Amount Withheld</u>	<u>Amount of Payment/Due Date</u>
Feb. 1-7	\$ 900	Add to next period
Feb. 8-15	900	\$1,800 by Feb. 18*
Feb. 16-22	1,010	\$1,010 by Feb. 25*
Feb. 23-28	900	Add to next period
Mar. 1-7	0	\$900 by Mar. 15*
Mar. 8-15	600	Add to next period
Mar. 16-22	600	\$1,200 by Mar. 25*
Mar. 23-31	400	Add to next period
Apr. 1-7	800	\$1,200 by Apr. 10*
NOTE: separate IL-501s must be used; one to report the \$400 withheld for the last quarter-monthly period of March, and the other to report the \$800 withheld for the first quarter-monthly period of April.		
Apr. 8-15	700	Add to next period
Apr. 16-22	200	Add to next period
April 23-30**	0	\$900 to next period
May 1-7	110	\$1,010 by May 10*

* With Form IL-501 (employee withholding).

** Form IL-941 (employee withholding) due April 30.

- e) Extension of time for filing returns. An extension of time for filing the statements and returns required to be filed under this subsection shall be granted upon approval of a similar extension granted by the Internal Revenue Service (but in no event to exceed six months) for filing the federal statements. The extension shall be for the same period as granted by the Internal Revenue Service and shall be granted by the Department upon submission of a copy of the federal application and approval of an extension.

(Source: Amended at 32 Ill. Reg _____, effective _____)

Section 100.7325 Time for Filing Returns and Making Payments for Taxes Required to Be Withheld On or After January 1, 2008 (IITA Section 704A)

- a) Quarterly return. Each return required under Section 100.7300(a) shall be filed on or before the last day of the first calendar month following the calendar quarter for which such return is made. IITA Section 704A(b).
- b) Monthly payments. Monthly payments required under Section 100.7300(d)(2) are due on or before the 15th day of the month following the month in which the tax was withheld or required to be withheld. IITA Section 704A(c)(3).
- c) Semi-weekly payments. Semi-weekly payments required under Section 100.7300(d)(1) or under Section 100.7310(b)(2)(B) are due:
 - 1) on or before each Friday of the calendar year, for taxes withheld or required to be withheld on the immediately preceding Saturday, Sunday, Monday, or Tuesday;
 - 2) on or before each Wednesday of the calendar year, for taxes withheld or required to be withheld on the immediately preceding Wednesday, Thursday, or Friday. IITA Section 704A(c)(1);
 - 3) If a payment due on a Friday or Wednesday under this subsection would include amounts withheld in two different quarters, a separate payment must be made for the amounts withheld in each quarter;
 - 4) Under 26 C.F.R. Section 31.6302-1(c)(2)(iii), semi-weekly depositors are given at least three banking days following the close of the semi-weekly period by which to deposit taxes during the semi-weekly period. Thus, if any of the three weekdays following the close of a semi-weekly period is a holiday on which banks are closed, the employer has an additional banking day by which to make the required deposit. For example, if the Monday following the close of a Wednesday to Friday semi-weekly period is a holiday on which banks are closed, the required deposit for the semi-weekly period may be made by the following Thursday rather than the following Wednesday. Under IITA Section 704A(d)(2), the Department may provide by regulation that any payment due under this subsection is deemed to be timely to the extent paid by electronic funds transfer on or before the due date for deposit of federal income taxes withheld from, or federal employment taxes due with respect to, the wages from which the Illinois taxes were withheld. Accordingly, employers making electronic payments of taxes withheld may use the due dates prescribed in 26 C.F.R. Section 31.6302-1(c)(2)(iii).
- d) Annual returns. Annual returns are due on or before:
 - 1) January 31 of the year following the calendar year for which the return is made, in the case of an annual return under Section 100.7310(b)(1). IITA Section 704A(d)(1); or
 - 2) the 15th day of the 4th month following the close of the taxpayer's tax year, in the case of an annual return under Section 100.7350. IITA Section 704A(e).

(Source: Added at 32 Ill. Reg _____, effective _____)

The amount of tax required to be shown to be due on each return required to be filed under IITA Sections 704 or 704A shall be due on or before the date on which such return is required to be filed, except to the extent that amount has been paid to the Department pursuant to a provision requiring payment prior to that date.

(Source: Amended at 32 Ill. Reg _____, effective _____)

Section 100.7350 Domestic Service Employment (IITA Sections 704 and 704A)

- a) On and after January 1, 1998, every employer who deducts and withholds or is required to deduct and withhold tax from a person engaged in domestic service employment, as that term is defined in IRC Section 3510, may comply with the payment and reporting requirements of IITA Section 704 filing an annual return and paying the taxes required to be deducted and withheld on or before the 15th day of the fourth month following the close of the employer's taxable year. IITA Sections 704(e-5) and 704A(e).
- b) All taxes withheld from compensation of domestic employees may be paid and reported under this provision, regardless of the amount of taxes withheld and regardless of whether the employer has other employees and must pay and report taxes withheld from their compensation under other provisions of IITA Sections 704 and 704A.
- c) Employers wishing to pay and report on an annual basis taxes withheld from domestic employees must register to do so with the Illinois Department of Employment Security, and use the form required by the Illinois Department of Employment Security to report the Illinois income taxes withheld and unemployment insurance contributions.

(Source: Added at 32 Ill. Reg _____, effective _____)

Section 100.7360 Definitions and Special Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)

For purposes of the provisions of IITA Sections 704 and 704A:

- a) Date of withholding. Income tax is withheld on the date payment of compensation is made to the employee. See IRS Revenue Ruling 74-126.

Example. An employer pays employees bi-monthly: on the last day of the month for services rendered through the 15th of the month and on the 15th of the month for services rendered from the 16th of the previous month through the end of the previous month. Taxes withheld from compensation earned in the second half of May and paid on June 15 are withheld on June 15 for purposes of determining when such taxes must be reported and paid over to the Department.
- b) Quarter-monthly period. A quarter-monthly period ends on the 7th, 15th, 22nd and last day of each calendar month. IITA Section 704(b) These dates are not affected by weekends or holidays. That is, the 7th of a month is the end of a quarter-monthly period, even if it is a Saturday, Sunday or holiday.
- c) Banking day. Saturdays, Sundays, legal holidays and local bank holidays are not banking days. IITA Section 704(b)

- d) Employer, employee, and compensation. The term "employer" includes all persons required to withhold Illinois income tax; "employee" includes all persons from whom Illinois income tax is required to be withheld; and "compensation" includes all payments from which Illinois income tax is withheld or required to be withheld. IITA Section 711(a). For purposes of determining when monthly, quarter-monthly or semi-weekly payments must be made and whether an employer is required to pay by electronic funds transfer, the amount of tax withheld or required to be withheld by the employer shall include all taxes withheld or required to be withheld under Article 7 of the IITA, other than taxes withheld from domestic employees that are reported and paid pursuant to Section 100.7350. IITA Section 711(a) and Section 2505-210 of the Department of Revenue Law.
- e) Look-back period. The term "look-back period" for a calendar year means the 12-month period ending June 30 of the preceding calendar year. For example, the look-back period for calendar 2008 is the period from July 1, 2006 through June 30, 2007.

(Source: Added at 32 Ill. Reg _____, effective _____)

Section 100.7370 Penalty and Interest Provisions Relating to Reporting and Payment of Income Tax Withheld (IITA Sections 704 and 704A)

- a) Failure to File Returns. *In addition to any other penalties imposed by the IITA, an employer failing to file a quarterly return or the annual transmittal form for wage and tax statements required by IITA Section 704 or regulations promulgated thereunder shall incur a penalty for each such failure as prescribed by UPIA Section 3-3. See Section 700.300 of Part 700 for more guidance on the penalty for failure to file quarterly and annual returns.*
- b) Failure to Pay. UPIA Sections 3-3(b), (b-5), (b-10), (b-15), and (b-20) provide for penalties for failure to pay amounts shown due on a return on or before the due date for payment. Pursuant to Section 700.500(c) of Part 700, any payment of taxes withheld during a quarter shall be applied against the earliest unpaid liability for that quarter under Section 100.7320(b) or (c) or Section 100.7325(b) or (c).

Example 1. An employer required to make semi-weekly payments is required to deposit \$500 each on the 10th, 18th, and 25th day of a month and on the 3rd day of the following month. Employer makes a payment of \$700 on the 15th of the month and pays the remaining \$1,300 of the liability on the 15th of the following month. No other payments are made during that period. \$500 of the payment on the 15th of the month is applied in satisfaction of the amount due on the 10th, and the remaining \$200 is applied toward the amount due on the 18th. The remainder of the amount due on the 18th and the remaining amounts due are unpaid until the 15th of the following month. Any amount withheld in the following month and due on or before the 15th of that month is subject to late payment penalty because the payment made on the 15th is applied to amounts due in the first month.

Example 2. The employer in Example 1 makes payments of \$500 each on the 18th and 25th days of the month and on the 3rd of the following month. The balance is paid on the 15th of the following month. The payment made on the 18th is applied to the amount due on the 10th, the payment made on the 25th is applied to the amount due on the 18th, and the payment made on the 3rd is applied to the amount due on the 25th. The penalty for late payment will therefore apply to all four amounts.

- c) Failure to withhold. If an employer fails to deduct and withhold any amount of tax as required under Article 7 of the IITA, and thereafter the tax on account of which such amount was required to be deducted and withheld is paid, such amount of tax shall not be collected from the employer, but the employer shall not be relieved from liability for penalties or interest otherwise applicable in respect of such failure to deduct and withhold. IITA Section 706 and IITA Section 713. The amount required to be deducted and withheld during a year shall be considered paid by the employee if the employee pays his or her entire Illinois income tax liability for that year, even if that liability is less than the amount required to be deducted and withheld by the employer. Any employer who fails to deduct and withhold the required amount of tax shall be liable for any underpayment of tax by the employee (excluding interest and penalties imposed on the employee), up to the amount the employer improperly failed to deduct and withhold, together with interest and penalties for failure to deduct and withhold; provided that the amount of tax due from the employee shall not be collected more than once under this provision.
- d) Personal Liability Penalty. Any person required to collect, truthfully account for, and pay over the tax required to be paid over under Article 7 of the IITA who willfully fails to collect such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for the penalty imposed by UPIA Section 3-7. IITA Section 1002(d). See Section 700.340 of Part 700.

(Source: Added at 32 Ill. Reg _____, effective _____)